



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 29 2009

Howard M. Cooper, Esq.
Todd & Weld LLP
28 State Street
Boston, MA 02109

Re: MUR 6231
(Mashpee Wampanoag Indian Tribal Council)

Dear Mr. Cooper:

On June 30, 2009, the Federal Election Commission (the "Commission") notified your client, Mashpee Wampanoag Indian Tribal Council, that the Commission had ascertained information in the normal course of carrying out its supervisory responsibilities indicating that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended.

Upon further review of the available information and information provided by you in your response, the Commission, on November 17, 2009, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sidney Rocks".

Sidney Rocks
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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2 **FEDERAL ELECTION COMMISSION**

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4 **FACTUAL AND LEGAL ANALYSIS**

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7 **RESPONDENT: Glenn Marshall MUR: 6231**

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10 **I. INTRODUCTION**

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12 This matter originated with information ascertained by the Federal Election Commission
13 ("the Commission") in the normal course of carrying out its supervisory responsibilities. See
14 2 U.S.C. § 437g(a)(2). On February 11, 2009, Glenn Marshall ("Marshall") entered a guilty plea
15 with the United States District Court for the District of Massachusetts admitting to a violation of
16 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended ("the Act"). On
17 May 11, 2009, Marshall was sentenced to serve 3½ years in prison, to make restitution in the
18 amount of \$383,000 for embezzled tribal funds, and to repay approximately \$80,000 to the
19 Social Security Administration. Marshall is currently in prison in Pennsylvania.

20 Had the Commission simply declined to open a matter under review, there would be no
21 public record of its analysis and conclusions regarding these violations. In the interests of
22 transparency and providing guidance, and for the reasons set forth below, the Commission
23 opened a matter under review, dismissed the matter on the grounds of prosecutorial discretion,
24 and closed the file.

25 **II. FACTUAL AND LEGAL ANALYSIS**

26 **A. Background**

27 On December 15, 2008, the Department of Justice, U.S. Attorney's Office, District of
28 Massachusetts ("DOJ") filed a five-count criminal felony Information ("Information") against
29 Marshall, a former chairman of the Mashpee Wampanoag Indian Tribal Council, Inc. ("Tribal

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1 Council" or "Tribe"). Among other charges, the Information alleges that Marshall violated 2
2 U.S.C. § 441b of the Act by knowingly and willfully making and encouraging others to make
3 straw contributions totaling approximately \$50,000, which Marshall allegedly reimbursed using
4 corporate funds, to various federal officials in an effort to secure federal recognition for the
5 Tribe. Marshall reimbursed the straw contributors, including himself, from an account belonging
6 to the Mashpee Fisherman's Association, Inc. ("Fisherman's Association").

7 On December 11, 2008, Marshall signed a plea agreement ("Plea Agreement") with DOJ
8 admitting guilt on all five felony counts. Under the Plea Agreement, Marshall agreed to
9 cooperate with authorities in their investigation in exchange for a sentence recommendation on
10 the low end of the advisory sentencing guideline range and restitution of over \$467,000.

11 The Tribe is a Native American tribe that has over 1,000 members, most of whom live in
12 or near the Town of Mashpee, Massachusetts. The Tribal Council was incorporated in 1974 as a
13 not-for-profit corporation organized under Massachusetts law, and it serves as the governing
14 body of the Tribe. On or about February 15, 2007, the Secretary of the Interior recognized the
15 Tribe as an Indian tribe under federal law.

16 Marshall, a tribal member, served as chairman of the Tribal Council from February 2001
17 to August 2007. In addition, between 2003 and 2008, Shawn Hendricks, Sr. ("Hendricks")
18 served as Vice-Chairman, and Desire Moreno ("Moreno") served as Clerk. The Fisherman's
19 Association is a non-profit Massachusetts corporation that was originally established in 1998 to
20 promote the Tribe's ancestral shell fishing interests on the southern shore of Cape Cod. Prior to
21 2003, the Fisherman's Association was dormant.

22 Beginning in 1999, the Tribe's effort for federal recognition was underwritten by a
23 Michigan-based limited liability corporation, AtMashpee, which provided the Tribe with

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1 millions of dollars for its operations and for legal, lobbying, and other professional services, in
2 exchange for an equity stake in any casino the Tribe might ultimately build. The Tribal Council
3 hired unidentified "Political Consultant A" in or about late 2001 to coordinate its lobbying
4 activities in support of the Tribe's effort to obtain both federal recognition and authorization to
5 build and operate a casino.

6 In mid-2002, Marshall concluded that the lobbyists recommended by AtMashpee had
7 failed to build sufficient political pressure in Congress for the Tribe's petition. Accordingly, in
8 September 2002, Marshall decided to replace the lobbyists and directed Political Consultant A to
9 find a Washington, D.C. lobbyist who would be more effective in presenting the Tribe's case for
10 recognition. In early 2003, Jack Abramoff ("Abramoff") began working for the Tribe.

11 Abramoff advised Marshall, Political Consultant A, and another unidentified officer of
12 the Tribal Council that, in order to advance its recognition effort, the Tribe needed to make
13 significant political contributions to certain Members of Congress so that they might apply
14 political pressure to the Department of Interior to grant the Tribe's petition. Around the same
15 time, Political Consultant A and certain other professionals hired by the Tribal Council informed
16 Marshall that they preferred to be paid directly by the Tribal Council rather than by AtMashpee.
17 Sometime during 2003, Marshall arranged it so that AtMashpee would fund the Tribal Council
18 for the payment of such services, and such funds would be directly transferred into the
19 Fisherman's Association account.

20 In consultation with Abramoff, his team, and lobbyists, Political Consultant A
21 recommended on numerous occasions to Marshall that certain state and federal legislators
22 receive campaign contributions. Between 2003 and 2007, Marshall used a portion of the
23 approximately \$4 million deposited into the Fisherman's Association account by AtMashpee to

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1 make campaign contributions to various elected officials in order to curry favor for the Tribe's
2 recognition and its effort to build a casino on tribal lands. Marshall has admitted to being aware
3 that federal law prohibited corporations, including the Tribal Council, from making contributions
4 to federal campaigns.

5 In order to disguise the source of the contributions, Marshall solicited various individuals,
6 including family members and officers of the Tribal Council, to act as straw contributors.
7 Marshall asked the family members and Tribal Council officers to write a check to the
8 candidate's re-election committee, insisting that the contribution was necessary to further the
9 Tribe's recognition effort and promising the straw contributor that the Tribal Council would
10 reimburse him or her for the contribution. Marshall himself also made straw contributions.

11 The Information does not identify the recipient Federal candidates and committees, and
12 there were no allegations that any of the candidates or committees had any knowledge that the
13 contributions were unlawful, nor were they otherwise implicated in Marshall's conduit scheme.
14 While the Information does not name corporate officers Hendricks or Moreno as defendants, it
15 does indicate that some of the straw contributions were made by these individuals. The
16 Commission has also identified additional potential straw contributions and the identity of those
17 conduits and recipients.

18 On June 26, 2009, the Commission sent notification letters to Marshall, Hendricks, and
19 Moreno, individually and in their capacities as Tribal Council officers; the Tribal Council; and
20 the Fisherman's Association. The purpose of the letters was to inform the recipients of the
21 possibility of being named as a respondent in an enforcement action and to provide them with the
22 opportunity to submit written factual or legal materials relevant to the matter within 15 days
23 from the date of the letter. Upon request, the Commission granted extensions to the Tribal

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1 Council and Glenn Marshall, and responses were received subsequently. Hendricks was also
2 granted a 10-day extension but did not submit a response. The Commission received no
3 response from Desire Moreno or the Fisherman's Association.

4 Counsel for the Tribe submitted a lengthy response that raises three basic arguments in
5 favor of not pursuing the Tribe in an enforcement matter. First, the Tribe argues that it has
6 sovereign immunity. Second, the Tribe argues that "Marshall defrauded the Tribe using
7 clandestine accounts held in the name of the Fisherman's Association and/or the Fisherman's
8 Association, Inc., neither of which were part of the Tribe."¹ The Tribe also asserts that in 2001,
9 Marshall, during his tenure as Chairman, affirmatively informed the Tribe that the Fisherman's
10 Association was not part of the Tribe, was not subject to governance by the Tribal Council, and
11 would not be kept or maintained as part of the Tribe's books and records. The Tribe denies that
12 it knew anything about the Fisherman's Association account or that it approved any of the
13 "payments" made from the accounts. Third, Counsel for the Tribe notes that its members have a
14 very low standard of living and that the Harvard Project on American Indian Economic
15 Development ("Harvard Project") has agreed to oversee the Tribe's government and compliance
16 modernization program.

17 Marshall's counsel, in the response to the Commission's notification letter, states
18 Marshall is an "indigent 60 year old man, currently serving a 41 month sentence." He also states
19 that it is highly unlikely that Marshall will be able to satisfy the \$467,612.62 order of restitution
20 upon his release from prison. Therefore, he argues that it "would be fruitless to bring a civil
21 action to seek recovery of any contributions allegedly made by Mr. Marshall."

¹ Counsel for the Tribal Council, in response to a follow up inquiry, provided us with some copies of the checks in their possession written by Marshall from the Fisherman's Association account. However, the Tribal Council asserts that it does not have additional information regarding the Fisherman's Association account and that Marshall has rebuffed all attempts to be interviewed by the new Tribal Council or its attorneys.

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B. Contributions in the Name of Another

The Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution, and that no person shall knowingly accept a contribution made by one person in the name of another person. *See* 2 U.S.C. § 441f.² Furthermore, the Commission's regulations provide that no person shall "knowingly help or assist any person in making a contribution in the name of another." 11 C.F.R. § 110.4(b)(iii).

1. Marshall

Marshall's criminal Information and Plea Agreement described a scheme to influence Members of Congress by funneling contributions through his family members and Tribal Council officers. Marshall admitted making straw contributions personally and through these individuals and reimbursing them with Tribal funds. In doing so, Marshall attempted to conceal the true source of the contributions.

Despite Marshall's clear violation of § 441f, the Commission determined that Marshall's criminal punishment, including both the prison sentence and the substantial restitution order imposed upon him, is sufficient to address his violations. Marshall is currently serving a prison sentence of 3½ years and is required to pay restitution of \$467,612.62 upon his release from prison. Marshall appears to be indigent, and there is no indication that Marshall will have any source of employment upon his release from prison at the age of 64. Indeed, the sentencing Court declined to impose a fine on Marshall for his actions due to his inability to pay one.

² On June 8, 2009, a federal district court judge in California dismissed criminal charges that Pierce O'Donnell violated § 441f by reimbursing conduit contributions to the 2004 presidential campaign of Senator John Edwards, ruling in part that Congress did not intend that provision to outlaw indirect contributions made through conduits. *U.S. v. O'Donnell*, C.D. Cal., Criminal No. 08-872. On September 23, 2009, the Commission filed an amicus curiae brief supporting the government's appeal of that decision. *See* MUR 5504 (Karoly) (recent Commission matter involving § 441f violation).

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Continuing to pursue Marshall under these circumstances does not appear to be a prudent use of Commission resources. Accordingly, the Commission approved opening a matter under review and determined to dismiss the matter based on prosecutorial discretion.

2. The Tribe

Marshall's activities also implicated the Tribe, which has not been named as a respondent in this matter. Unlike Marshall, the Tribe's liability under §441f is not clear. As described more fully in Subsection II.B. below, there is substantial doubt as to whether Tribal Council funds were used by Marshall to make the reimbursements to the conduits. Indeed, other Tribal officials claim not to have approved any of the payments or reimbursements from the Fisherman's Association account. Rather than initiating an investigation into this matter, the Commission declined to take further action as to the Tribe in connection with potential violations of § 441f.³

B. Corporate Contributions

Corporations are prohibited from making contributions from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). It is also unlawful for an officer or director of a corporation to consent to any contribution by the corporation that is prohibited by the Act. *Id.*

As noted above, the Information alleged that Marshall violated § 441b by knowingly and willfully making and encouraging others to make straw contributions totaling approximately \$50,000, which Marshall allegedly reimbursed using corporate funds. For each of the reasons outlined above with regard to the alleged violations of § 441f, the Commission determined that

³ As noted above, the Tribe raised sovereign immunity as a defense in its response. Because the Commission determined not to take further action as to the Tribe in this matter, we need not reach the Tribe's assertion of sovereign immunity here.

1 Marshall's criminal punishment, including both the prison sentence and the substantial restitution
2 order imposed upon him, is sufficient. Continuing to pursue Marshall under these circumstances
3 does not appear to be a prudent use of Commission resources. Accordingly, the Commission
4 approved opening a matter under review and determined to dismiss the matter based on
5 prosecutorial discretion.

6 Marshall's conduct also raises the issue of whether the funds used to make the
7 reimbursements to the conduits were actually Tribal Council funds, thereby resulting in a
8 violation of section 441b. As noted previously, the Tribal Council is a corporation, and
9 Marshall, Hendricks, and Moreno were corporate officers. Based on information provided by the
10 Tribal Council in its response to the Commission's notification letter, however, there is now
11 substantial doubt as to whether Tribal Council funds were used by Marshall to reimburse the
12 conduits. It appears that the Fisherman's Association account used by Marshall to make the
13 reimbursements was not an account belonging to the Tribal Council and had been dormant since
14 2001.

15 As a result of the agreement with AtMashpee, Marshall directed that funds associated
16 with the lobbying efforts on behalf of the Tribe be directly deposited into the Fisherman's
17 Association account between 2003 and 2007. There were only two signatories on this account,
18 Marshall and another unidentified Tribal Council officer. It was a portion of these funds that
19 Marshall used to reimburse the conduits. Therefore, it is at best unclear whether the Tribal
20 Council's funds were used by Marshall to further his conduit scheme. Rather than initiating an
21 investigation into this matter, the Commission declined to take further action as to the Tribe in
22 connection with potential violations of § 441b.

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As to the Fisherman's Association, which has also not been named as a respondent in this matter, there is every indication that the corporation may be an "empty shell." Moreover, it would take significant effort to explore the relationship between the Fisherman's Association and the Tribal Council. Accordingly, the Commission declined to take further action as to the Fisherman's Association in connection with this matter.

C. The Conduits

In prior cases, the Commission has not pursued conduits in contribution reimbursement schemes where the conduits were subordinate employees or spouses. In other cases, however, the Commission has pursued individual conduits, such as when they were actively involved in the reimbursement schemes, coerced or encouraged others to participate in such schemes, or were public officials.⁴ In this case, the information available does not demonstrate the existence of such circumstances, making the pursuit of Hendricks and Moreno, who also have not been named as respondents, unwarranted. At most, the information we have shows that Hendricks and Moreno were Tribal Council officers during the time period of Marshall's reimbursement scheme, but we do not know if merely holding these titles created any of the circumstances mentioned above. Moreover, given that it would be necessary to initiate an investigation to resolve the discrepancy between Marshall's criminal information and the Tribal Council's response as to whether the reimbursements were made by Marshall with Tribal Council funds, and the looming expiration of the statute of limitations for the majority of the reimbursed

⁴ See e.g., MUR 5871 (Noe) (after an investigation, the Commission found reason to believe as to (1) conduits who not only actively participated in the conduit scheme, but also recruited others to participate, and (2) public officials who participated in the scheme, but ultimately took no further action as to conduits who were merely subordinates/employees); and MUR 5666 (MZM, Inc.) (after an investigation, Commission found reason to believe as to one conduit, a senior manager of MZM, Inc., who reimbursed other less-senior conduits and himself with company funds for political contributions, but Commission took no further action as to other less-senior employee conduits; the Commission ultimately accepted a signed conciliation agreement from the senior manager conduit admitting to a violation of 2 U.S.C. § 441f and providing for a civil penalty of \$42,000).

1 contributions, the Commission concluded that it would not be a prudent use of its resources to
2 pursue the conduits. Accordingly, the Commission declined to take further action as to
3 Hendricks and Moreno in connection with this matter.

4 **III. CONCLUSION**

5 Based on the foregoing reasons, the Commission opened a matter under review,
6 dismissed MUR 6231 as a matter of prosecutorial discretion, and closed the file. *See Heckler v.*
7 *Chaney*, 470 U.S. 821 (1985).

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